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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,737	11/13/2001	Ton That Hai	DI-5737	9461

29200 7590 05/10/2004

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DEERFIELD, IL 60015

EXAMINER

LANGEL, WAYNE A

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 05/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



**UNITED STATES DEPARTMENT OF COMMERCE**  
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09993737

EXAMINER
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ART UNIT	PAPER NUMBER
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1754

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 3-12-04 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.       |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/>   |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-35 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☒ Claims 12-20 are allowed.

4. ☒ Claims 1-11 and 21-35 are rejected.

5. ☐ Claims \_\_\_\_\_ are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this

Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 and 21-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tawil et al. or Stynes et al. or British 1,476,641 or the article by Inoue et al., for the reasons given in the last Office action.

Claims 26-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tawil et al. or Stynes et al. or British 1,476,641 or Inoue et al. as applied to claim 6 above, and further in view of Marantz et al., for the reasons given in the last Office action. Applicant's argument, that nowhere does the cited art disclose or suggest the zirconium phosphate features as claimed, such as the zirconium phosphate particle or granule features as defined in claims 1, 6 and 21-23, is not convincing.

Tawil et al. teach at column 4, lines 64-66 that the zirconium phosphate is granular and has a "predetermined particle size distribution". It would be prima facie obvious from such

disclosure of Tawil et al. to provide any suitable particle size distribution for the zirconium phosphate. Accordingly it would be prima facie obvious to provide the particle size distribution as recited in applicant's claim 6 according to the process of Tawil et al. Applicant's argument, that the composition recited in applicant's claims will provide for a better absorption of materials such as ammonia, calcium and magnesium, is not convincing, since there is no comparative data on record to support such contention. In any event, there is no evidence on record showing that the better absorption of materials such as ammonia, calcium and magnesium would not be due to the specific particle size distribution of the zirconium phosphate, rather than by the recited method by which the zirconium phosphate is made. Applicant's argument, that the Patent Office relies on Marantz et al. to remedy the deficiencies of the primary references, is not convincing, since Marantz et al. is merely relied upon to establish the conventionality of employing zirconium phosphate particles in a dialysate system and in the form of a particle bed.

Applicant is invited to update the status of the patent application referred to on page 7, line 32 of the specification.

Claims 12-20 are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the

extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne A. Langel whose telephone number is (571) 272-1353. The examiner can normally be reached on Monday through Friday from 8 A.M. to 3:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on (571) 272-1358. The fax phone number for this Group is (703) 872-9306.

Information regarding the status of an application may be

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obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WAL:cdc

May 5, 2004

*Wayne A. Langel*  
WAYNE A. LANGEL  
PRIMARY EXAMINER